was that the Bills of Sale Enactment provides for the special case of bills of sale, and therefore the Moneylenders Ordinance, a general statute, must be read as silently excluding from its operation Bills of Sale. I cannot agree. It appears to be perfectly possible for the two written laws to be operated in respect of the same transaction. The protection afforded by the Bills of Sale Enactment (see Cap. 57, section 8) appears to me to be that there shall be certainty as to what is the security. Section 16 of the Moneylenders Ordinance protects the borrower by ensuring that he is in possession of the terms of his contract of repayment before he actually receives the loan. There is nothing repugnant between these written laws. I consider that a moneylender must comply with section 16(1) of the Moneylenders Ordinance even when he is lending money on the security of a properly registered bill of sale. I can see nothing in such compliance which is not agreeable to justice and reason.

I do not consider that the applicant complied fully with section 16(1) of the Moneylenders Ordinance and that consequently the security given by the respondent is unenforceable.

I find myself in the same situation as the Court in the case of *Sadhu Singh v. Sellathurai*[1], at page 119 penultimate paragraph in that I have sympathy for the applicant but feel that I cannot fly in the face of the Moneylenders Ordinance.

The application is dismissed.

Since much time in this case has been taken up in deciding issues of fact which I have found in favour of the applicant and the arguing of points raised on behalf of the respondent by the Court, I consider that this is a proper case in which I should make no award of costs.

Application dismissed. No order as to costs.

Application dismissed.

Solicitors: *Bannon & Bailey.*

CHONG HOOI v. TEE NGI (f)

[A. C. J. (Sutherland J.) September 28, 1957]

[K. L. — Civil Appeal No. 14 of 1957]

Husband and Wife — Married Women and Children (Maintenance) Ordinance, 1950 — Offer by husband to maintain his wife on condition of her living with him — Offer made in Court — Duty of Court to decide whether offer is genuine and if so whether wife had sufficient reason to refuse the offer.

In this case the respondent claimed maintenance from the appellant. At the hearing in Court the husband offered to maintain his wife on condition that she lived with him. The Magistrate made no finding as to whether the offer was genuine but said that he was satisfied that the respondent did not refuse to live with the appellant.

Held: where an offer is made by the husband to maintain his wife on condition of her living with him, the Court should have considered whether the offer was genuine and, if the wife refused it, whether she had sufficient reason for refusing to live with her husband.

CIVIL APPEAL.

P. P. Nair for the appellant.

Eugene Lye for the respondent.

Sutherland J. : — The appellant appeals against the decision of the learned Magistrate that the appellant pay the respondent as from 1st January, 1956, the sum of $80 per month for maintenance of the applicant and the daughter of the appellant with the respondent.

Mr. P. P. Nair, who appeared for the appellant, stated that the appellant was not pressing the question of alleged adultery.

He did however urge the point as to respondent's alleged refusal to live with appellant without sufficient cause. He referred to the Married Women and Children (Maintenance) Ordinance 1950, section 5 sub-section (2), and, as the parties to the appeal were at issue in respect of section 5, I propose to quote it

"5. (1) If any person, against whom an order has been applied for or made for the maintenance of his wife, offers to maintain his wife on condition of her living with him, and his wife refuses to do so, the Court shall consider any grounds of refusal stated by such wife, and may make or enforce the order aforesaid, notwithstanding such offer, if it is satisfied that such person is living in adultery or for any other reason it is just so to do.

(2) No wife shall be entitled to receive an allowance from her husband under the provisions of this Ordinance if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband."

Mr. Nair conceded that the learned Magistrate found that the wife did not refuse to live with the husband, but he urged that in arriving at this finding the Magistrate had overlooked the evidence. The husband offered to take her back. The Magistrate did not put the offer to the applicant and consider her reasons for refusing to live with applicant. In any event $80 out of $154.10 per month is too much.

Mr. Lye, for the respondent, stated that nowhere in the evidence of the husband has he made an outright offer to live with his wife. On oath the husband made an allegation that his wife had committed adultery. The Magistrate did consider the offer, and is justified in his finding as to it. The wife

explained the reason for living separately. The husband left her in Kuala Selangor. Later she came to Kuala Lumpur. It was the husband who left the wife. The wife had to follow him and catch up with him. The husband left the wife and refused to do anything for her. The Magistrate has outlined the evidence and it cannot be said that he has not considered it. The question of whether there was a *bona fide* offer was for the Magistrate, who said he was satisfied that the wife did not refuse to live with the husband. The Magistrate saw both parties and could say who was at fault. The Magistrate does not believe the husband; and he does not believe the husband made an offer to the wife to live with him. In page 1 of the record the appellant appeals on the ground that the complainant was not a legally married wife, but a mistress, and as such not entitled to maintenance for herself and the child. Yet in evidence the husband admits that she is his wife. This shows what kind of man he is. The husband alleges in Open Court that his wife was adulterous. The Magistrate could form the opinion as to the honesty of the husband's allegation that he made an offer to his wife to live with him. There was no *bona fide* offer and the appellant must fail. If the order is excessive application can be made by the husband to the Court by which the order was made to vary it. The order was made in 1956 but the appellant has not paid one cent.

Mr. Nair in reply stated that the husband offered in Court to take the wife back, and the Magistrate does not say why he does not believe appellant.

The crux of the case was :—

(1) Did the Appellant at any time offer to maintain his wife on condition of her living with him?

(2) If so, did the wife refuse to live with him?

(3) If so, did the wife have sufficient reason for refusing to live with her husband?

As to the question (1) *supra*, there appears from the record to be only one answer possible, and that is 'Yes'. At the hearing in Court, the husband says :—

"I want my wife to come back in spite of the fact that she slept with another man. Whenever I asked my wife to stay with me she refused to do so." . . . . . "I agree that I have to maintain them if they stay in my house."

Whether this offer in Court was a genuine one or not is a matter for the learned Magistrate. The Magistrate, however, makes no finding on this point. He does not say he did not believe the husband's offer, which incontrovertibly was made in Court. What he says is that he is satisfied applicant did not refuse to live with respondent. That may be sound so far as it goes, but it does not deal with the husband's offer in Court. It seems to me, with all respect to the learned Magistrate, that when the husband made his offer in Court, the offer passed to the wife who should either have accepted or refused it. If she refused it, there was a statutory onus on the Court to consider any grounds of refusal stated by the wife.

Further, no wife is entitled to receive any allowance from her husband under the Ordinance if without any sufficient reason she refuses to live with her husband.

It appears to me, therefore, basing myself on the record, that while the learned Magistrate's grounds of decision are valid so far as they go, when the husband made his offer in Court to maintain his wife on condition of her living with him, unless the learned Magistrate found (and he makes no such finding) that the offer was *mala fide*, the matter passed to his wife, who should have stated whether *at that time* (i.e. at the time of the hearing) she refused to live with the husband. If she did at the time of the hearing refuse to live with her husband, there was a duty on the Court to consider any grounds of refusal stated by the wife. The matter would then resolve itself into whether such grounds (if any) were sufficient and whether it was just to make an order.

Mr. Nair's contention that the husband offered in Court to take the wife back appeared to me to be sound and a powerful argument in support of appellant's case.

I am of the view that, although the learned Magistrate's grounds were valid so far as they proceeded, they did not extend sufficiently far to deal with section 5 of the Ordinance, and that the case took a wrong turning.

Reluctant as I am to prolong litigation, I feel compelled to order that the order be set aside and that a new trial be had, strict regard being paid to section 5 of the Ordinance if that section applies to the facts and circumstances of the new trial.

Order accordingly.

Solicitors : *P. P. Nair; Eugene Lye & Hoh.*